

HOUSE BILL NO. 343

INTRODUCED BY D. WANZENRIED

A BILL FOR AN ACT ENTITLED: "AN ACT AUTHORIZING LOCAL GOVERNMENTS TO REQUIRE PARK DEDICATION FOR MINOR SUBDIVISIONS; AUTHORIZING REVIEW OF MINOR SUBDIVISIONS UNDER THE SAME PROCEDURES REGARDLESS OF WHETHER PARK LAND IS DEDICATED; AND AMENDING SECTIONS 76-3-505, 76-3-609, AND 76-3-621, MCA."

WHEREAS, the creation and development of parks are critical components of urban neighborhoods; and

WHEREAS, new residential subdivisions within a partially developed area create increased demand for urban parks; and

WHEREAS, local governments currently have no way to require a dedication of land or cash payment for minor subdivisions.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

Section 1. Section 76-3-505, MCA, is amended to read:

"76-3-505. Provision for summary review of minor subdivisions. (1) Local subdivision regulations must include procedures for the summary review and approval of subdivision plats containing five or fewer parcels when proper access to all lots is provided, ~~when no land in the subdivision will be dedicated to public use for parks or playgrounds,~~ and when the plats have been approved by the department of environmental quality whenever approval is required by chapter 4, part 1 of chapter 4, ~~however~~ However, reasonable local regulations may contain additional requirements for summary approval.

(2) (a) Except when required by local subdivision regulations, proposed subdivisions eligible for summary review under this section that are located entirely within the jurisdictional area covered by a growth policy adopted pursuant to chapter 1 and zoning regulations adopted pursuant to chapter 2, part 2 or 3, are exempt from:

(i) the requirement to hold a hearing on the preliminary plat pursuant to 76-3-605; and

(ii) review by the governing body of the criteria in 76-3-608(3)(a).

(b) The governing body shall approve, conditionally approve, or disapprove a proposed subdivision that is eligible for review under this subsection (2) within 35 days of submission of the subdivision application."

Section 2. Section 76-3-609, MCA, is amended to read:

"76-3-609. Review procedure for minor subdivisions. Subdivisions containing five or fewer parcels in which proper access to all lots is provided ~~and in which there is not any land to be dedicated to the public for parks or playgrounds~~ are to be reviewed as follows:

(1) The governing body shall approve, conditionally approve, or disapprove the first minor subdivision from a tract of record within 35 working days of the submission of the application.

(2) The governing body shall state in writing the conditions that must be met if the subdivision is conditionally approved or what local regulations would not be met by the subdivision if it disapproves the subdivision.

(3) The requirements for holding a public hearing and preparing an environmental assessment do not apply to the first minor subdivision created from a tract of record.

(4) Subsequent subdivisions from a tract of record must be reviewed under 76-3-505 and regulations adopted pursuant to that section."

Section 3. Section 76-3-621, MCA, is amended to read:

"76-3-621. Park dedication requirement. (1) Except as provided in subsections (2), (3), and (6):

(a) a subdivider of a major subdivision shall dedicate to the governing body a cash or land donation equal to:

~~(a)~~(i) 11% of the area of the land proposed to be subdivided into parcels of one-half acre or smaller;

~~(b)~~(ii) 7.5% of the area of the land proposed to be subdivided into parcels larger than one-half acre and not larger than 1 acre;

~~(c)~~(iii) 5% of the area of the land proposed to be subdivided into parcels larger than 1 acre and not larger than 3 acres; and

~~(d)~~(iv) 2.5% of the area of the land proposed to be subdivided into parcels larger than 3 acres and not larger than 5 acres.

1 (b) a governing body may establish park dedication requirements that require a subdivider of a
2 minor subdivision to dedicate to the governing body a cash or land donation that does not exceed the
3 donation requirement for a major subdivision as provided for in subsection (1)(a).

4 (2) When a subdivision is located totally within an area for which density requirements have been
5 adopted pursuant to a growth policy under chapter 1 or pursuant to zoning regulations under chapter 2,
6 the governing body may establish park dedication requirements based on the community need for parks
7 and the development densities identified in the growth policy or regulations. Park dedication requirements
8 established under this subsection are in lieu of those provided in subsection (1) and may not exceed 0.03
9 acres per dwelling unit.

10 (3) A park dedication may not be required for:

11 ~~(a) a minor subdivision;~~

12 ~~(b)(a)~~ land proposed for subdivision into parcels larger than 5 acres;

13 ~~(c)(b)~~ subdivision into parcels that are all nonresidential;

14 ~~(d)(c)~~ a subdivision in which parcels are not created, except when that subdivision provides
15 permanent multiple spaces for recreational camping vehicles, mobile homes, or condominiums; or

16 ~~(e)(d)~~ a subdivision in which only one additional parcel is created.

17 (4) The governing body, in consultation with the subdivider and the planning board or park board
18 that has jurisdiction, may determine suitable locations for parks and playgrounds and, giving due weight
19 and consideration to the expressed preference of the subdivider, may determine whether the park
20 dedication must be a land donation, cash donation, or a combination of both. When a combination of land
21 donation and cash donation is required, the cash donation may not exceed the proportional amount not
22 covered by the land donation.

23 (5) (a) In accordance with the provisions of subsections (5)(b) and (5)(c), the governing body shall
24 use the dedicated money or land for development, acquisition, or maintenance of parks to serve the
25 subdivision.

26 (b) The governing body may use the dedicated money to acquire, develop, or maintain, within its
27 jurisdiction, parks or recreational areas or for the purchase of public open space or conservation easements
28 only if:

29 (i) the park, recreational area, open space, or conservation easement is within a reasonably close
30 proximity to the proposed subdivision; and

(ii) the governing body has formally adopted a park plan that establishes the needs and procedures for use of the money.

(c) The governing body may not use more than 50% of the dedicated money for park maintenance.

(6) The local governing body shall waive the park dedication requirement if:

(a) (i) the preliminary plat provides for a planned unit development or other development with land permanently set aside for park and recreational uses sufficient to meet the needs of the persons who will ultimately reside in the development; and

(ii) the area of the land and any improvements set aside for park and recreational purposes equals or exceeds the area of the dedication required under subsection (1);

(b) (i) the preliminary plat provides long-term protection of:

(A) critical wildlife habitat;

(B) cultural, historical, or natural resources;

(C) agricultural interests; or

(D) aesthetic values; and

(ii) the area of the land proposed to be subdivided, by virtue of providing long-term protection provided for in subsection (6)(b)(i), is reduced by an amount equal to or exceeding the area of the dedication required under subsection (1); or

(c) the area of the land proposed to be subdivided, by virtue of a combination of the provisions of subsections (6)(a) and (6)(b), is reduced by an amount equal to or exceeding the area of the dedication required under subsection (1).

(7) For the purposes of this section:

(a) "cash donation" is the fair market value of the unsubdivided, unimproved land; and

(b) "dwelling unit" means a residential structure in which a person or persons reside."

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